

August 9, 1971

Report of Discussions with Federal Trade Commission Staff

On Monday morning, August 9th, Messrs. Kornegay, Mills, and Austern met at the Federal Trade Commission with Mr. Robert Pitofsky, Director of the Bureau of Consumer Protection, Mr. Gerald Thain, head of the Advertising Section of that Bureau, and Messrs. Brauning and Power of Mr. Thain's staff.

Mr. Pitofsky stated that Mr. Austern had indicated in a telephone conversation last week that he had not as yet received all of the comments on a preliminary memorandum he had circulated to industry lawyers concerning the redrafting of the complaint, nor had he received all of the suggestions and ideas for modification of Paragraph 6 of the boiler plate Consent Order Agreement. Mr. Austern reported further that in the view of many industry lawyers the primary point was to investigate what content would have to be given to the controlling phrase in any order, "a clear and conspicuous disclosure."

Mr. Pitofsky stated that he agreed that this would be the first and important question to be resolved. He reported further that the Commission Staff was still consulting outside experts in an effort to finalize their ideas.

Thus far the Staff had more or less agreed on the direction they would seek to go, and had concentrated on an approach to full page print advertisements.

Basically, they had determined that the warning, in order to be clear and conspicuous:

-- Would have to appear consistently in every advertisement;

-- That it would have to appear in an octagonal box;

-- That as to placement, that octagonal box could appear anywhere in the total advertisement (except that if an ad occupied more than one page, the warning should appear on each page of the advertisement);

-- That the warning should always appear in black on white in every advertisement; and

-- That it should occupy a prescribed percentage of the total area of the advertisement.

*10.1% 12%  
10%  
As mod - up to 10%*

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As to the octagonal shape of the advertisement, they stated that their objective was that the warning in cigarette advertising should not be associated with any "existing set of values" and should be such that it is not associated with any similar shape. The thinking appeared to be that this would be comparable to standard highway signs.

As to the text to be required, the Staff submitted the attached form of typography.

As to the percentage of the total area the warning should occupy, they have asked some of their experts, and are asking others, to suggest what size would make it difficult for the casual reader to fail to observe the warning.

Their preliminary conclusion was that the area to be occupied by the warning would be in the range of 10 percent to 12 percent.

As to billboards, they had arrived at no conclusions, and as to point of sale materials that would remain to be worked out with the recognition that some of these of permanent character may be excluded.

Messrs. Kornegay, Mills, and Austern stated that they would endeavor to communicate these ideas with complete accuracy.

None of the industry representatives in any way indicated that the proposal would be acceptable as a basis for settlement or indeed for further negotiations.

In passing, the industry representatives indicated that it could be said that the Staff proposal went far beyond the format suggested by the New York Times or by the British.

Mr. Kornegay gave Mr. Pitofsky a copy of the <sup>NY Times</sup> guidelines.

Mr. Kornegay inquired whether the Staff had considered the possibility of using our symbol in advertising.

Mr. Pitofsky responded with reference to his basic thinking that cigarette advertising was unique and was a prime example of advertising that induced an irrational consumer choice, without reference to quality or price.

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Mr. Kornegay next pointed out that the 10-12 percent area suggestion would result in the warning occupying a very considerable portion of a standard magazine page. Mr. Mills observed that the suggested warning format would be equivalent to a highway "STOP" sign, rather than anything comparable to a "YIELD" sign.

Mr. Austern stated that the suggestions took no cognizance of the fact that the general public had been barraged with anti-cigarette messages on smoking and health, and that this factor was in his thinking. Mr. Austern invited the Staff to consider the Federal Hazardous Substances Act, which dealt only with words rather than format, as an indication of an approach worth investigating.

All three of the industry representatives suggested that the format suggested changed, and, to some extent, distorted the Congressional warning.

Mr. Pitofsky stated that they had concluded that words alone would not be satisfactory but a standardized format of a specified size, only in black on white, would meet the objectives.

In response to Mr. Austern's inquiry, Messrs. Pitofsky and Thain stated that they would have their expert advertising advice fully in hand by the end of this week. Mr. Pitofsky asked that the industry representatives communicate with Mr. Thain while Mr. Pitofsky was on vacation until Labor Day.

H.T.A.

Attachment

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